



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2015-0313; FRL-9934-50-Region 4]**

**Approval and Promulgation of Implementation Plans for the State of Alabama:**

**Cross-State Air Pollution Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve the State of Alabama's March 27, 2015, State Implementation Plan (SIP) revision, submitted by the Alabama Department of Environmental Management (ADEM). This SIP revision provides Alabama's state-determined allowance allocations for existing electric generating units (EGUs) in the State for the 2016 control periods and replaces the allowance allocations for the 2016 control periods established by EPA under the Cross-State Air Pollution Rule (CSAPR). The CSAPR addresses the "good neighbor" provision of the Clean Air Act (CAA or Act) that requires states to reduce the transport of pollution that significantly affects downwind air quality. In this final action, EPA is approving Alabama's SIP revision, incorporating the state-determined allocations for the 2016 control periods into the SIP, and amending the regulatory text of the CSAPR Federal Implementation Plan (FIP) to reflect this approval and inclusion of the state-

determined allocations. EPA's allocations of CSAPR trading program allowances for Alabama for control periods in 2017 and beyond remain in place until the State submits and EPA approves state-determined allocations for those control periods through another SIP revision. The CSAPR FIPs for Alabama remain in place until such time as the State decides to replace the FIPs with a SIP revision.

**DATES:** This rule will be effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2015-0313. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Twunjala Bradley, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Twunjala Bradley can be reached by phone at (404) 562-9352 or via electronic mail at [bradley.twunjala@epa.gov](mailto:bradley.twunjala@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

EPA is taking final action to approve Alabama's March 27, 2015, SIP revision submitted by ADEM that modifies the allocations of allowances established by EPA under the CSAPR FIPs for existing EGUs for the 2016 control periods.<sup>1</sup> The CSAPR allows a subject state, instead of EPA, to allocate allowances under the sulfur dioxide (SO<sub>2</sub>) annual, nitrogen oxides (NO<sub>x</sub>) annual, and NO<sub>x</sub> ozone season trading programs to existing EGUs in the State for the 2016 control periods provided that the state meets certain regulatory requirements.<sup>2</sup> EPA issued the CSAPR on August 8, 2011, to address CAA section 110(a)(2)(D)(i)(I) requirements concerning the interstate transport of air pollution and to replace the Clean Air Interstate Rule,<sup>3</sup> which the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded to

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<sup>1</sup> Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals; August 8, 2011 (76 FR 48208).

<sup>2</sup> The CSAPR is implemented in two Phases (I and II) with Phase I referring to 2015 and 2016 control periods, and Phase II consisting of 2017 and beyond control periods.

<sup>3</sup> Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone Clean Air Interstate Rule; Revisions to Acid Rain Program; Revisions to the NO<sub>x</sub> SIP Call; May 12, 2005 (70 FR 25162).

EPA for replacement.<sup>4</sup> EPA found that emissions of SO<sub>2</sub> and NO<sub>x</sub> in 28 eastern, midwestern, and southern states contribute significantly to nonattainment or interfere with maintenance in one or more downwind states with respect to one or more of three air quality standards—the annual PM<sub>2.5</sub> NAAQS promulgated in 1997<sup>5</sup> (15 micrograms per cubic meter (µg/m<sup>3</sup>)), the 24-hour PM<sub>2.5</sub> NAAQS promulgated in 2006<sup>6</sup> (35 µg/m<sup>3</sup>), and the 8-hour ozone NAAQS promulgated in 1997<sup>7</sup> (0.08 parts per million). The CSAPR identified emission reduction responsibilities of upwind states, and also promulgated enforceable FIPs to achieve the required emission reductions in each of these states through cost effective and flexible requirements for power plants.

Alabama is subject to the FIPs that implement the CSAPR and require certain EGUs to participate in the EPA-administered federal SO<sub>2</sub> annual, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season cap-and-trade programs.<sup>8</sup> Alabama's March 27, 2015, SIP revision allocates allowances under the CSAPR to existing EGUs in the State for the 2016 control periods only. Alabama's SIP revision includes state-determined allocations for the CSAPR NO<sub>x</sub> annual, NO<sub>x</sub> ozone season, and SO<sub>2</sub> Group 2 annual trading programs, and complies with the 2016 NO<sub>x</sub> allowance

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<sup>4</sup> *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), *modified on reh'g*, 550 F.3d 1176 (D.C. Cir. 2008).

<sup>5</sup> National Ambient Air Quality Standards for Particulate Matter; July 18, 1997 (62 FR 36852).

<sup>6</sup> National Ambient Air Quality Standards for Particulate Matter; October 17, 2006 (71 FR 61144).

<sup>7</sup> National Ambient Air Quality Standards for Ozone; July 18, 1997 (62 FR 38856).

<sup>8</sup> On July 28, 2015, the D.C. Circuit issued an opinion upholding CSAPR but remanding without vacatur certain state emissions budgets to EPA for reconsideration. *EME Homer City Generation, L.P. v. EPA*, No. 11-1302, slip op. CSAPR implementation at this time remains unaffected by the court decision, and EPA will address the remanded emissions budgets in a separate rulemaking. While Alabama's SO<sub>2</sub> emissions budget for phase 2 (i.e., control periods in 2017 and subsequent years) was among the budgets remanded to EPA for reconsideration, this SIP revision concerns allowance allocations only for the 2016 control periods, which are part of phase 1.

allocation SIP requirements and the 2016 SO<sub>2</sub> allowance allocation SIP requirements set forth at 40 CFR 52.38 and 52.39, respectively. Pursuant to these regulations, a state may replace EPA's CSAPR allowance allocations for existing EGUs for the 2016 control periods provided that the state submits a timely SIP revision containing those allocations to EPA that meets the requirements in 40 CFR 52.38 and 52.39.

On July 27, 2015, EPA published direct final and proposed rulemaking notices to approve Alabama's March 27, 2015, SIP revision. *See* 80 FR 44292 and 80 FR 44320.<sup>9</sup> In these notices, EPA stated that if adverse comments were received by August 26, 2015, EPA would publish a notice in the Federal Register withdrawing the final rule and informing the public that the rule would not take effect. EPA received a single adverse comment on August 26, 2015, and has withdrawn the direct final rule. In the July 27, 2015, notices, EPA informed the public that adverse comments would be addressed in a final action based upon the proposed rule published on July 27, 2015 (80 FR 44320). EPA is responding to the adverse comment in this final action.

## **II. Response to Comment**

EPA received one adverse comment on its July 27, 2015, proposed rule. This anonymous comment is located in the docket for this final action. *See* Docket ID: EPA-R04-OAR-2015-0275. A summary of the adverse comment and EPA's response are provided below.

**Comment:** The Commenter states that "these proposed regulations have not adequately considered the cost of implementation and, as such, should not be implemented. Implementation

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<sup>9</sup> As noted in the July 27, 2015, notice of proposed rulemaking (80 FR 44320), EPA's detailed analysis of Alabama's SIP revision is provided in the direct final rulemaking published on July 27, 2015 (80 FR 44292). EPA incorporates that analysis herein by reference.

of these regulations would almost certainly create additional costs for Alabama based electric[i]ty producers which would be passed along to residential and commer[ci]al customers and to additional consumers from the greater cost of producing goods and services. Until the EPA properly quantifies the additional cost from this implementation and performs the cost benefit analysis required by law the implementation of this rule should not occur.”

**Response:** EPA disagrees with the Commenter because the comments are beyond the scope of this action. Pursuant to CAA section 110(k)(3), EPA’s role in reviewing SIP submissions is to review state choices for consistency with the applicable requirements of the CAA, and EPA must approve a SIP revision that meets all applicable requirements of the CAA. The Commenter has not identified any aspect of the Alabama SIP submission that is inconsistent with the applicable CAA requirements, whether CAA section 110(a)(2)(D)(i)(I) or any other provision of the Act. EPA notes that it evaluated the costs and benefits of the implementation of CSAPR during its rulemaking process, which was conducted in 2010 and 2011. The Commenter’s concerns regarding the costs of implementing CSAPR are therefore untimely because the public comment periods regarding the CSAPR and its implementation requirements have long since closed. The present action is limited to the state’s modification of the allowance allocations under CSAPR to sources within the state and does not otherwise modify the emission reduction obligations (i.e. the emission budgets) or implementation requirements finalized in CSAPR.

### **III. Effective Date of This Action**

EPA is making [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] the effective date of this final action. In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], effective date for this action is authorized under 5 U.S.C. 553(d)(3), which provides that rulemaking actions may become effective less than 30 days after publication, “as otherwise provided by the agency for good cause found and published with the rule.” The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this final rule establishes state-determined allocations of allowances for the control periods in 2016 to existing EGUs in the State under the CSAPR’s NO<sub>x</sub> annual and ozone season and SO<sub>2</sub> Group 2 trading programs. The EGUs whose allowance allocations may be changed by this rule are already regulated under the CSAPR FIPs and do not face any new regulatory requirements under this rule. Furthermore, EPA must approve Alabama’s SIP submission by October 1, 2015, to ensure that recordation of the 2016 allowances in the Allowance Management System is based on the state-determined allocations. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

#### **IV. Final Action**

EPA is taking final action to approve Alabama’s March 27, 2015, CSAPR SIP revision

that provides Alabama's state-determined allocations of allowances for existing EGUs in the State for the 2016 control periods to replace the allowance allocations for the 2016 control periods established by EPA under CSAPR. Consistent with the flexibility given to states in the CSAPR FIPs at 40 CFR 52.38 and 52.39, Alabama's SIP revision establishes state-determined allocations of allowances to existing EGUs in the State under the CSAPR's NO<sub>x</sub> annual and ozone season and SO<sub>2</sub> Group 2 annual trading programs. Alabama's SIP revision meets the applicable requirements in 40 CFR 52.38(a)(3) and (b)(3) for allocations of NO<sub>x</sub> annual and NO<sub>x</sub> ozone season allowances, respectively, and 40 CFR 52.39(g) for allocations of SO<sub>2</sub> Group 2 annual allowances. EPA is amending the CSAPR FIP's regulatory text for Alabama at 40 CFR 52.54 and 52.55 to reflect this approval and inclusion of the state-determined allocations of allowances for the 2016 control periods. EPA is not making any other changes to the CSAPR FIPs for Alabama in this action. EPA's allocations of CSAPR trading program allowances for Alabama for control periods in 2017 and beyond remain in place until the State submits and EPA approves state-determined allocations for those control periods through another SIP revision. The CSAPR FIPs for Alabama remain in place until such time the State decides to replace the FIPs with a SIP revision. EPA is approving Alabama's SIP revision because it is in accordance with the CAA and its implementing regulations.

## **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices,



provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which

a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

*See* section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 11, 2015.

Heather McTeer Toney

Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

**PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

**Subpart B – Alabama**

2. Section 52.50(e) is amended by adding an entry for “Cross State Air Pollution Rule - State-Determined Allowance Allocations for the 2016 control periods” at the end of the table to read as follows:

**§ 52.50 Identification of plan.**

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(e) \* \* \*

EPA Approved Alabama Non-Regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
**	**	**	*	
Cross State Air Pollution Rule - State-Determined Allowance Allocations for the 2016 control periods	Alabama	3/27/2014	[Insert date of publication in Federal Register]	

3. Section 52.54 is amended by adding paragraphs (a)(3) and (b)(3) to read as follows:

**§ 52.54 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?**

(a) \* \* \*

(3) Pursuant to § 52.38(a)(3), Alabama's state-determined TR NO<sub>x</sub> Annual allowance allocations established in the March 27, 2015, SIP revision replace the unit-level TR NO<sub>x</sub> Annual allowance allocation provisions of the TR NO<sub>x</sub> Annual Trading Program at 40 CFR 97.411(a) for the State for the 2016 control period with a list of TR NO<sub>x</sub> Annual units that commenced operation prior to January 1, 2010, in the State and the state-determined amount of TR NO<sub>x</sub> Annual allowances allocated to each unit on such list for the 2016 control period, as approved by EPA on [Insert date of publication in the Federal Register].

(b) \* \* \*

(3) Pursuant to § 52.38(b)(3), Alabama's state-determined TR NO<sub>x</sub> Ozone Season allowance allocations established in the March 27, 2015, SIP revision replace the unit-level TR NO<sub>x</sub> Ozone Season allowance allocation provisions of the TR NO<sub>x</sub> Ozone Season Trading Program at 40 CFR 97.511(a) for the State for the 2016 control period with a list of TR NO<sub>x</sub> Ozone Season units that commenced operation prior to January 1, 2010, in the State and the state-determined amount of TR NO<sub>x</sub> Ozone Season allowances allocated to each unit on such list for the 2016 control period, as approved by EPA on [Insert date of publication in the Federal Register].

4. Section 52.55 is amended by adding paragraph (c) to read as follows:

**§ 52.55 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of sulfur dioxide?**

\* \* \* \* \*

(c) Pursuant to § 52.39(g), Alabama's state-determined TR SO<sub>2</sub> Group 2 allowance allocations established in the March 27, 2015, SIP revision replace the unit-level TR SO<sub>2</sub> Group 2 allowance allocation provisions of the TR SO<sub>2</sub> Group 2 Trading Program at 40 CFR 97.711(a) for the State for the 2016 control period with a list of TR SO<sub>2</sub> Group 2 units that commenced operation prior to January 1, 2010, in the State and the state-determined amount of TR SO<sub>2</sub> Group 2 allowances allocated to each unit on such list for the 2016 control period, as approved by EPA on [Insert date of publication in the Federal Register].

[FR Doc. 2015-24051 Filed: 9/21/2015 08:45 am; Publication Date: 9/22/2015]